86270-2

Supreme Court No. _____
Court of Appeals No. 28875-7-III
(consolidated under 28860-9-III)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

LEAH LYNN SWEANY
Defendant/Appellant.

APPEAL FROM THE BENTON COUNTY SUPERIOR COURT
HONORABLE VIC L. VANDERSCHOOR

PETITION FOR REVIEW (LEAH LYNN SWEANY)

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I. IDENTITY OF PETITIONER.

Petitioner, Leah Lynn Sweany, was the defendant in the trial court and the appellant in the Court of Appeals. She asks this Court to accept review of the following Court of Appeals decision terminating review.

II. COURT OF APPEALS DECISION.

Ms. Sweany seeks review of the Court of Appeals' published decision, filed June 14, 2011, which affirmed her conviction for first degree arson. A copy of the opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW.

1. Under RCW 9A.48.020, a person is guilty of arson if she "knowingly and maliciously ... (d) causes a fire ... on property valued at ten thousand dollars or more with intent to collect insurance proceeds." Does the term "valued at" mean the amount of insurance coverage on the property or should it stand for market value?

2. Where one of two charged alternatives means of committing first degree arson is not supported by substantial evidence, is reversal required for a failure of jury unanimity and violation of due process?

IV. STATEMENT OF THE CASE.

Juanita Silvers, petitioner Leah Sweany's grandmother, purchased a 1982 Fleetwood mobile home in 2001 for $10,500. RP 373-74. Ms. Silvers

lived in the trailer until 2008 when she signed it over to Leah's mother, Ms. Leysa Sweany. RP 375.

From 2001 until January 7, 2009, Leah, her brother and their mother lived in the trailer in the Santiago Estates in Kennewick. RP 446. The trailer was insured for $45,000. RP 450.

The mother was served with an eviction notice on December 9, 2008. RP 234. She verbally agreed to vacate on December 31, 2008, but was still living in the space in January 2009. On January 7, 2009, firefighters were called to a fire at the trailer. RP 14. The fire was quickly extinguished and limited to the kitchen range and island. RP 46-54.

The State charged Leah and her mother with first degree arson, alleging they, acting alone or as an accomplice, started the fire with the intent of collecting the insurance proceeds. CP 4–5, 65–66. At trial, the State presented evidence that trailers built before 1995, such as this trailer, sold for anywhere between $6000 and $12,000. RP 238. The interior of the trailer was described as "dismal" with graffiti on the walls and the paneling on one wall hanging loose. RP 113, 121, 475. The trailer's assessed value in 2009 was $8350. RP 330.

The jurors were instructed in pertinent part that in order to convict Leah they must find:

(1) That on or about January 7, 2009, the defendant cause a fire or was an accomplice with another who caused the fire:
(2) That the fire
    (a) damaged a dwelling or
    (b) was on property *valued at ten thousand dollars or more* and was with the intent to collect insurance proceeds; and ...

...

If you find from the evidence that elements (1), (3), (4), and any of the alternative elements (2)(a) or (2)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a) or (2)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt. ...

Instruction No. 14 at CP 105; 1/14/10[1] RP 29–30 (emphasis added).

In closing argument, the prosecutor told the jury:

We have to show the defendants caused, that is the key phrase, caused a fire either acting alone or acting as accomplices. We have to show that the fire was to a dwelling, and there's a legal definition for that word dwelling, but it's pretty obvious it's where a person lives, or it was a dwelling or it was made for purposes of collecting on insurance on property valued, insurance value more than $10,000, and we have to show that this was done knowingly and maliciously.

So, really there's only one key question here. The only real issue is whether the defendant's knowingly caused the fire. It was a dwelling. There's no question about that. The property was insured for more than $10,000. We can argue about 65. I'm gonna obviously. They've got documents showing it was $45,000 the mobile home was insured for. Okay. It was insured for more than that.

[1] The transcripts of the trial days are mostly contained in Volumes I, II and III, numbered sequentially, and will be referred to as "RP ___". The second half of the last day of trial was reported by a different court reporter and will be referred to by its date as "1/14/10 RP ___".

The jury subsequently convicted Leah as charged. CP 115. This appeal followed. CP 126–27.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

Petitioner believes that this Court should accept review because the meaning of the term "valued at" for purposes of the first degree arson statute is an issue of first impression d that should be determined by the Supreme Court, and the decision of the Court of Appeals appears to be in conflict with other decisions of this Court, and the Court of Appeals. RAP 13.4(b)(1), (2) and (4).

The State failed to prove the trailer was valued at $10,000 or more.

1. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt. As a part of the due process rights guaranteed under both the Wash. Const. art. I, § 3 and United States Constitution, Fourteenth Amendment, the State must prove every element of a crime charged beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due

process. State v. Moore, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. Id.

Washington further requires unanimous jury verdicts in criminal cases. Wash. Const. art. I, § 21; State v. Stephens, 93 Wn.2d 186, 190, 607 P.2d 304 (1980). The multiple means of committing first degree arson under RCW 9A.48.020 constitute alternative means for which there must be substantial evidence for all charged alternatives. State v. Flowers, 30 Wn. App. 718, 722–23, 637 P.2d 1009 (1981), *rev. denied,* 97 Wn.2d 1024 (1982). "Substantial evidence" in the context of a criminal case, means evidence sufficient to persuade "an unprejudiced thinking mind of the truth of the fact to which the evidence is directed." State v. Taplin, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting State v. Collins, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)).

If one or more of the alternative means is not supported by substantial evidence, the verdict will stand only if the appellate court can determine that the verdict was based on only one of the alternative means and that substantial evidence supported that alternative means. State v. Rivas, 349, 351–52, 984 P.2d 432 (1999), *rev. denied*, 140 Wn.2d 1013, 5

P.3d 9 (2000), *overruled on other grounds*, State v. Smith, 159 Wn.2d 778, 154 P.3d 873 (2007).

Here, Leah was convicted of first degree arson. The jury was instructed there were two alternative means of committing the crime: if Leah caused a fire that (1) damaged a dwelling or (2) was on property *valued at ten thousand dollars or more*. Instruction No. 14 at CP 105 (emphasis added); RCW 9A.48.020 (1)(b) and (d). There is no dispute the trailer was damaged by fire. However, there was no substantial evidence that the trailed was valued at $10,000 or more.

2. "Insurance value" distorts the application of RCW 9A.48.020(1)(d). Division III determined that the phrase "valued at" means the insured value:

> The plain and ordinary meaning of 'valued at' is of a value that is not inherent or objective but which is, or has been assigned. In the context of insurance-motivated arson, where criminal liability attaches if fire is caused on 'property valued at ten thousand dollars or more with intent to collect insurance,' the logical assigned value is the insured value: the amount that the arsonist-insured presumably hopes to collect.

Slip Opinion, p. 9. Without discussion, the Court posits that:

> [T]he purpose of the statutory scheme is better served by imposing criminal liability based on the amount of insurance proceeds that the arsonist hopes to collect than on the actual value of the property; in other words, by imposing criminal liability on the owner who sets fire to a $9,000 mobile home in hopes of collecting on a $45,000 claim rather than on the unlikely owner who sets fire to a $45,000

> mobile home in hopes of collecting on a policy insuring the home for $9,000.

Id.

Statutes must be construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Courts should interpret statutes in a way that avoids a strained or unrealistic interpretation. In re Pers. Restraint of Brady, 154 Wn. App. 189, 193, 224 P.3d 842 (2010) (citing State v. Tejada, 93 Wn. App. 907, 911, 971 P.2d 79 (1999)). The statute criminalizes "[c]aus[ing] a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds." RCW 9A.48.020(d). In relevant part, the State must prove the essential elements that the fire "was on property valued at ten thousand dollars or more" and "was [set] with the intent to collect insurance proceeds." 11A WAPRAC WPIC 80.02.

By focusing on insured value, Division III narrows the scope of the act that is criminalized by RCW 9A.48.020(1)(d). Yes, it is a crime to knowingly set fire to property that is over-insured in the hopes of collecting a windfall. And evidence that a property is over-insured certainly provides motive in support of the element of "with intent to collect insurance proceeds." But it is also a crime to set fire to property that is insured at or

even below market value for the purpose of collecting money. Interpreting "valued at" to mean insurance value distorts the clear intent of the Legislature to punish any arsonist who deliberately sets fire to property to cash in on insurance proceeds.

3. The essential element of "valued at $10,000 or more" should represent the objective market value. No Washington cases appear to have dealt with the element of "value" in the context of the crime of arson. At least one state court has determined that the appropriate method of proving this element is the "market value" of the property. The Oklahoma Court of Criminal Appeals interpreted its third degree arson statute, which required proof "the property ignited or burned be worth not less than fifty dollars ($50.00)," to require proof of the market value of the property:

> [M]arket value is the usual standard of valuation. "Fair market value" is defined as, "[t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Black's Law Dictionary 597 (5th ed. 1979). Further, Black's Law Dictionary also defines "worth" as, "[t]he quality or value of a thing which gives it value." Id. at 1607.

Jackson v. State, 818 P.2d 910, 911 (Okl.Crim.App.Ct. (1991).

Further, arson is generally considered a property crime. *See e.g.*, State v. Coria, 146 Wn.2d 631, 647–48, 48 P.3d 980 (2002) (Sanders, J., (dissenting)). Thus, a "market value" method of valuation would be

consistent with the definition of "value" used for other property crimes such as theft and robbery under RCW 9A.56 *et seq.*:

> "Value" means the market value[2] of the property or services at the time and in the approximate area of the criminal act.

RCW 9A.56.010(18)(a).

Using market value is the appropriate way of determining the value of the trailer herein since there was evidence establishing that amount. The evidence showed that in 2001, the trailer's market value was $10,500 based upon Ms. Silver's purchase for that price. RP 374. By 2009, the trailer's value had depreciated to an assessed value of only $8,350. RP 330. Given the state of the interior of the trailer at the time of the fire as testified to by several witnesses[3], the value of the trailer was substantially closer to the $8,350 assessed value, and most certainly less than the $10,000 element the State was charged with proving.

The State argued that the "insured value" of the trailer—either $65,000 or $45,000—established the requisite element of "valued at ten thousand dollars or more." 1/14/10 RP 34–35. However, this argument is circular and illogical, where the State also contended that the trailer was

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[2] Market value is the "price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction." State v. Kleist, 126 Wn.2d 432, 435, 895 P.2d 398 (1995) (*quoting* State v. Clark, 13 Wn. App. 782, 787, 537 P.2d 820 (1975)). Market value is based not on the value to any particular person, but rather on an objective standard. Kleist, 126 Wn.2d at 438, 895 P.2d 398.

heavily over insured. 1/14/10 RP 40, 75–76, 82. Speculation about the value is not substantial evidence. Moore, 7 Wn. App. 1. The statute requires proof of actual value, and the State failed to prove this element.

4. The verdict was not based on only one of the charged alternative means. If one of the alternative means presented to the jury is not supported by substantial evidence, the verdict must be vacated unless the reviewing court finds that the verdict must have been based on one alternative that was supported by substantial evidence. State v. Rivas, 97 Wn. App. 349, 351-52, 984 P.2d 432 (1999), *disapproved on other grounds*, Smith, 159 Wn.2d at 787. When there is only a general verdict, the reviewing court presumes the error requires reversal. Id. at 353.

Here, the jury was instructed as to two alternative means of committing the crime and the State argued both means during closing argument. The State proved that the fire was for the purposes of obtaining insurance proceeds, but failed to understand it was required to prove the value of the trailer was $10,000 or greater. In closing, the State argued *only* that the $10,000 value was proven because the trailer was insured for$45,000 or $65,000. 1/14/10 RP 34, 40, 75–76, 82. Although the jury was instructed on unanimity in the "to convict" instruction, there was no

[3] RP 111–13, 120–21, 475–76.

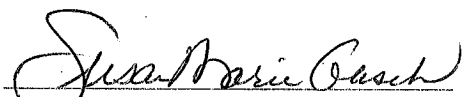
special verdict allowing the jury to specify which alternative means it found or whether it found both alternative means. Thus, this Court cannot determine that the verdict rested on only one alternative means.

5. The remedy for a verdict based on unproven alternative means is reversal. If the evidence is insufficient to support a verdict on each of the alternative means submitted to the jury, the conviction must be reversed. Rivas, 97 Wn. App. at 351–52. There was not substantial evidence supporting one of the alternative means under RCW 9A.48.020(1)(d) as the State failed to prove the trailer was worth $10,000 or more. Absent a constitutionally valid special verdict, this Court must presume that the verdict could have rested on either of the alternatives. State v. Nicholson, 119 Wn. App. 855, 860, 84 P.3d 877 (2003). Thus, Leah's rights to due process and a unanimous verdict were violated and her conviction must be reversed.

VI. CONCLUSION.

For the reasons stated, the conviction must be reversed.

Respectfully submitted on July 14, 2011.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. LEYSA LYNN SWEANY, Appellant.	)	No. 28860-9-III (consolidated with No. 28875-7-III) Division Three
STATE OF WASHINGTON, Respondent, v. LEAH LYNN SWEANY, Appellant.	)	PUBLISHED OPINION

SIDDOWAY, J. — Washington's criminal code identifies four alternative means by which an individual commits first degree arson, one of which is where he or she "knowingly and maliciously . . . [c]auses a fire or explosion on property valued at ten

thousand dollars or more with intent to collect insurance proceeds."[1] Leysa and Leah Sweany's consolidated appeal of their convictions for first degree arson requires us to review whether the State presented sufficient evidence to support the required ten thousand dollar value and, in that connection, to determine whether the value to be proved is fair market value or insured value. We conclude that in the context of the arson statute, the expression "valued at ten thousand dollars or more" refers to the value assigned the property for insurance purposes, whether or not it is (as it should be) a fair reflection of fair market value or replacement value. Because the evidence is sufficient to support the convictions, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Leysa Sweany and her then 23-year-old daughter Leah Sweany[2] lived in a mobile home in Kennewick. Leysa's mother, Juanita Silvers, purchased the home for Leysa and her children in 2001 and leased the lot in the mobile home park where it was located. In 2008, Mrs. Silvers transferred title to the mobile home to Leysa. Leysa thereafter purchased a policy insuring the home for $65,000 effective November 17, 2008, later dropping the coverage to $45,000 to reduce the premium cost.

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[1] RCW 9A.48.020(1)(d).

[2] Given the common last name, we refer to Leysa and Leah by their first names. We mean no disrespect.

The term of Mrs. Silvers' written lease for her lot in the mobile home park had expired prior to the time she transferred title to the home to Leysa. Continued tenancy was on a month-to-month basis. With the transfer of ownership, Leysa was required to apply for her own lease, which was declined. She received a notice of eviction from the mobile home park on December 9, 2008 and reached agreement with management of the park that she would have until December 31 to move. The deadline passed without Leysa's moving the mobile home, however; the cost to move the mobile home proved more than she could afford.

On the early afternoon of January 7, 2009, neighbors noticed smoke coming from Leysa's mobile home and summoned firefighters, who extinguished a fire that was confined to the island in the kitchen and stovetop area. Insurance and police investigations followed, revealing that Leysa's financial situation had deteriorated in the months leading up to the fire, and that Leah had spoken with friends about her and her mother's plans to cause an "accidental" fire in the home for the insurance proceeds. Both Leysa and Leah were charged with first degree arson.

At trial, the State presented evidence in support of two alternative means by which an individual commits first degree arson; first, if "he or she knowingly and maliciously . . . [c]auses a fire or explosion which damages a dwelling" and second, if "he or she knowingly and maliciously . . . [c]auses a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance." RCW 9A.48.020(1)(b), (d).

The jury was instructed that "[t]o return a verdict of guilty, the jury need not be unanimous as to which of [the alternatives] has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt." Clerk's Papers at 38 (Instruction 13).

Leysa and Leah were convicted. They appeal, contending that the State failed to prove an essential element—a greater-than-$10,000-value for the mobile home—beyond a reasonable doubt.

ANALYSIS

I

A defendant's right to require that the State prove each essential element of a crime beyond a reasonable doubt is a due process right guaranteed under the United States Constitution. U.S. CONST. amends. V, XIV; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Lively*, 130 Wn.2d 1, 11, 921 P.2d 1035 (1996). The State argues as a threshold matter that we should decline review of Leysa's and Leah's challenge to the sufficiency of the evidence because they did not contest a $10,000 value for the property at trial, nor did they object to the jury instruction that included insurance-motivated arson as a basis for conviction. Although the State concedes that a challenge to the sufficiency of the evidence raises constitutional error, it argues that the alleged error is not "manifest" constitutional error that can be raised for the first time on appeal.

The State's argument overlooks the longstanding maxim that a criminal defendant may always challenge the sufficiency of the evidence supporting a conviction for the first time on appeal. *State v. Hickman*, 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998) (noting that "[a]ppeal is the first time sufficiency of evidence may realistically be raised"). RAP 2.5(a) includes "failure to establish facts upon which relief can be granted" as an express exception from its general prohibition against raising new issues on appeal; an exception separate and in addition to the exception under the rule for constitutional error that is manifest. *Roberson v. Perez*, 156 Wn.2d 33, 40, 123 P.3d 844 (2005). A defendant challenging the sufficiency of the evidence is not obliged to demonstrate that the due process violation is manifest.

The State also contends that failure to contest a $10,000 value below should foreclose Leysa's and Leah's challenge on the basis of invited error or judicial estoppel. Neither applies. The invited error doctrine "prohibits a party from setting up an error at trial and then complaining of it on appeal." *State v. Pam*, 101 Wn.2d 507, 511, 680 P.2d 762 (1984), *overruled on other grounds by State v. Olson*, 126 Wn.2d 315, 893 P.2d 629 (1995). Judicial estoppel prevents a party from taking inconsistent factual positions from one proceeding to the next but does not preclude inconsistent legal positions. *Anfinson v. FedEx Ground Package Sys., Inc.*, 159 Wn. App. 35, 61, 244 P.3d 32 (2010), *petition for review filed* (Wash. Apr. 29, 2011) (No. 85949-3). Leysa and Leah did not set up error when they accepted the trial court's jury instructions nor do they dispute the instructions

now. They also have not taken an inconsistent factual position on appeal; they do not dispute any facts established below. While Leysa testified at trial that the mobile home might be worth "[a] little bit more [than $10,000] maybe[,] because of my interior," the truth of that evidence is admitted; it is the sufficiency of that and other evidence that is challenged. Report of Proceedings (RP) at 475. The issues raised on appeal are legal in nature and do not implicate the doctrine of judicial estoppel.[3]

II

Leysa and Leah concede that substantial evidence supports conviction for the first degree arson alternative provided by RCW 9A.48.020(1)(b), that the fire "damage[d] a dwelling." They also concede that substantial evidence supports finding that the fire was set with the intent to collect insurance proceeds. But they argue that substantial evidence does not support the requirement of RCW 9A.48.020(1)(d) that the fire was caused on "property valued at ten thousand dollars or more." In advancing this argument, they contend that "value" must mean the fair market value of the property. The State responds that the term should be interpreted to mean the insured value of the property. The State

[3] Leysa's and Leah's arguments pertain to statutory construction and substantial evidence. Questions regarding statutory construction are clearly matters of law. *United States v. Hoffman*, 154 Wn.2d 730, 737, 116 P.3d 999 (2005). Whether substantial evidence exists is also a question of law for the court. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972) (citing *State v. Zamora*, 6 Wn. App. 130, 133, 491 P.2d 1342 (1971), *review denied*, 80 Wn.2d 1006 (1972)).

also argues that substantial evidence supports the "value" element regardless of which interpretation we adopt.

A fundamental protection accorded to a criminal defendant is that a jury of his or her peers must unanimously agree on guilt. *State v. Stephens*, 93 Wn.2d 186, 607 P.2d 304 (1980). "It is well established, however, that when the crime charged can be committed by more than one means, the defendant does not have a right to a unanimous jury determination as to the alleged means used to carry out the charged crime or crimes should the jury be instructed on more than one of those means." *State v. Smith*, 159 Wn.2d 778, 783, 154 P.3d 873 (2007). However, "in order to safeguard the defendant's constitutional right to a unanimous verdict as to the alleged crime, substantial evidence of each of the relied-on alternative means must be presented." *Id.*[4]

Leysa's and Leah's argument requires us to answer two questions: (1) what "value" is considered in applying the first degree arson statute, RCW 9A.48.020, and (2) with that value in mind, does substantial evidence support finding a value greater than $10,000.

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[4] There is no bright-line rule by which the courts can determine whether the legislature intended to provide alternate means of committing a particular crime. *State v. Peterson*, 168 Wn.2d 763, 769, 230 P.3d 588 (2010) (quoting *State v. Klimes*, 117 Wn. App. 758, 769, 73 P.3d 416 (2003)). The first degree arson statute, RCW 9A.48.020, has long been recognized to specify alternative means by which a person may commit the crime, however. *State v. Flowers*, 30 Wn. App. 718, 722-23, 637 P.2d 1009 (1981), *review denied*, 97 Wn.2d 1024 (1982).

III

We apply de novo review to questions of statutory construction. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). When interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). To determine that intent, we first look to the language of the statute. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language of the statute is clear and unambiguous, we must give effect to the language as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

In determining the plain meaning of a provision, we look to the text of the statutory provision in question as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Jacobs*, 154 Wn.2d at 600.

Leysa and Leah argue that while the term "value" is not defined in chapter 9A.48 RCW, it is defined elsewhere in the criminal code. RCW 9A.56.010 provides a definition for value in the context of our theft and robbery statutes. It defines the term as "the market value of the property . . . at the time and in the approximate area of the criminal act." RCW 9A.56.010(18)(a). "Market value" has been determined to mean "'the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction.'" *State v. Kleist*, 126 Wn.2d 432, 435, 895 P.2d 398

(1995) (quoting *State v. Clark*, 13 Wn. App. 782, 787, 537 P.2d 820 (1975)). "Value," thus defined, is an inherent, objective attribute of the property.

However, the arson statute does not use the noun "value"; it speaks of property "valued at" $10,000 or more. The plain and ordinary meaning of "valued at" is of a value that is not inherent or objective but which is, or has been, assigned. In the context of insurance-motivated arson, where criminal liability attaches if fire is caused on "property valued at ten thousand dollars or more with intent to collect insurance," the logical assigned value is the insured value: the amount that the arsonist-insured presumably hopes to collect. Assuming a perfect underwriting process, the insured value provided by a policy will be the actual cash value (fair value) or a projected replacement value of the insured's interest in the property; a standard fire policy written in Washington insures on that basis and over-insurance is prohibited. WAC 284-20-010(3); *Hess v. N. Pac. Ins. Co.*, 122 Wn.2d 180, 183, 859 P.2d 586 (1993); RCW 48.27.010, .020. Where a disparity exists between actual cash value or replacement value, on the one hand, and insured value, on the other, the purpose of the statutory scheme is better served by imposing criminal liability based on the amount of insurance proceeds that the arsonist hopes to collect than on the actual value of the property; in other words, by imposing criminal liability on the owner who sets fire to a $9,000 mobile home in hopes of collecting on a

$45,000 claim rather than on the unlikely owner who sets fire to a $45,000 mobile home in hopes of collecting on a policy insuring the home for $9,000.[5]

IV

Given that construction of RCW 9A.48.020(1)(d), Leysa and Leah have no basis for a sufficiency challenge. The evidence that the insured value of the mobile home at the time of the fire was at least $45,000 was clear and undisputed. Their argument on appeal proceeds exclusively from what they argue was the absence of evidence of a greater-than-$10,000 fair market value.

In that connection, however, and as an alternative basis for affirming the trial court, review reveals that while the sufficiency of the evidence to establish a greater-than-$10,000 fair market value presents a much closer question, the evidence was nonetheless sufficient under that meaning of "value" as well.

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Substantial

[5] This is so even recognizing that replacement coverage could pay out somewhat more than the insured value should replacement cost exceed the insured amount.

evidence means evidence in the record of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

It is not essential that there be direct evidence of value; reasonable inferences from substantial evidence may suffice. *State v. Melrose*, 2 Wn. App. 824, 831, 470 P.2d 552 (1970); *see also State v. Liles*, 11 Wn. App. 166, 171, 521 P.2d 973, *review denied*, 84 Wn.2d 1005 (1974). When substantial evidence is present, the drawing of reasonable inferences therefrom and the doing of some conjecturing on the basis of such evidence is permissible and acceptable. *Melrose*, 2 Wn. App. at 831 (citing *Lavender v. Kurn*, 327 U.S. 645, 66 S. Ct. 740, 90 L. Ed. 916 (1946)).

Mrs. Silvers testified that she paid $10,500 for the mobile home in 2001, having talked her seller down from an asking price of $15,000. The price paid for an item of property, if not too remote in time, is proper evidence of its value. *Id.* Due allowance can be made by the jury for changes in the condition of the property that affect its market value. *Id.* The manager of the mobile home park testified to familiarity with the market price for mobile homes and that a pre-1995 single-wide mobile home in the park could sell for between $6,000 and $12,000.[6] When Leysa was asked if she thought the home was worth less than $10,000 she replied that it was worth "[a] little bit more maybe[,]

[6] Firefighter Rob Buckley testified that the mobile home in question is a single-wide.

because of my interior." RP at 475. Finally, although the property's insured value was characterized by the State as inflated and therefore evidence of insurance-motivated arson, insured value is intended to reflect actual value and the State presented evidence that Leysa had insured the home for $65,000 initially, and later $45,000.

Leysa and Leah nonetheless point to evidence that the county's assessed value for the mobile home in 2009 was $8,350 and that the interior of the home was in poor condition prior to the fire and had graffiti on the walls, and to the State's argument, from these facts and the $10,500 purchase price in 2001, that the home was worth only a fraction of its insured value. Such argument goes to the weight of the evidence, not its sufficiency. When viewed in the light most favorable to the State, the record contains sufficient evidence from which a jury could reasonably conclude that the fair market and insured values of the mobile home were both $10,000 or more at the time of the fire.

We affirm.

Siddoway, J.

WE CONCUR:

Kulik, C.J.

Brown, J.

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

86270-2

STATE OF WASHINGTON, Plaintiff/Respondent,	Consolidated with No. 28860-9-III
vs.	PROOF OF SERVICE (RAP 18.5(b))
LEAH LYNN SWEANY Defendant/Appellant.	Court of Appeals No. 28875-7-III Benton County No. 09-1-00377-1

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on July 14, 2011, I mailed to the following as appropriate, by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), or personally served, a true and correct copy of petition for review (Leah Lynn Sweany):

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